

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MOLOTOV PAULING,	)	Case No. 04-02203-JCC-JPD
	)	
Petitioner,	)	
	)	
v.	)	
	)	ORDER ON JURISDICTION AND
CHRISTINE O. GREGOIRE,	)	DIRECTING ANSWER ON MERITS
	)	
Respondent.	)	
_____	)	

On March 29, 2000, the petitioner Molotov Pauling was convicted of two counts of second degree extortion. Dkt. No 12, Ex. 1. He was sentenced to 90 days in county jail and ordered to attend a court-ordered domestic violence program, which he still attends. Dkt. No 12, Exs. 1, B. On October 27, 2004, petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, claiming that the statute used to convict him violates the First and Fourteenth Amendments to the U.S. Constitution. Dkt. No. 1. Respondent's Answer asserted that the Court lacked jurisdiction to consider the petition because petitioner completed his incarceration and is therefore no longer "in custody" for purposes of § 2254. Dkt. No. 11. Petitioner's responded that, although he is no longer physically imprisoned, his mandatory attendance at a court-ordered domestic violence program satisfies the "in custody" jurisdictional requirement. Dkt. No. 16.

Having considered the parties' pleadings and state court record, the Court hereby orders:

ORDER ON JURISDICTION AND DIRECTING  
ANSWER ON MERITS  
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01           (1)     Petitioner is “in custody” for purposes of § 2254 and the Court has jurisdiction  
02 to consider the merits of his petition. Before federal courts can exercise jurisdiction to issue a  
03 writ of habeas corpus, a petitioner must be “in custody pursuant to the judgment of a State  
04 court . . . in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. §  
05 2254(a).

06           The Supreme Court has held that “once the sentence imposed for a conviction has  
07 completely expired, the *collateral consequences* of that conviction are not themselves  
08 sufficient to render an individual ‘in custody’ for the purposes of a habeas attack.” *Maleng v.*  
09 *Cook*, 490 U.S. 488, 492 (1989) (per curiam) (emphasis added). In general, fines, the inability  
10 to vote, and the revocation of certain licenses have been held to constitute “collateral  
11 consequences” that do not satisfy the “in custody” requirement. *Williamson v. Gregoire*, 151  
12 F.3d 1180, 1183 (9th Cir. 1998) (internal citations omitted).

13           However, even when a petitioner is not physically incarcerated, conditions that  
14 “significantly restrain [his] liberty to do those things which in this country free men are entitled  
15 to do” can render him “in custody.” See *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).  
16 Court-ordered attendance at rehabilitative courses renders a petitioner “in custody” for  
17 purposes of § 2254 because requiring “physical presence at a particular place significantly  
18 restrains [one’s] liberty.” *Dow v. Circuit Court of the First Circuit*, 995 F.2d 992, 993 (9th  
19 Cir. 1993).

20           Here, petitioner’s continuing non-voluntary participation in a court-ordered domestic  
21 violence program satisfies the “in custody” requirement. Petitioner is required to attend  
22 court-ordered rehabilitative courses that require his physical presence at specific places and  
23 times. Dkt. No 12, Ex. B. Petitioner therefore suffers a significant restraint on his liberty to  
24 “do those things which free persons in the United States are entitled to do.” This Court has  
25 jurisdiction over the petition.

26           (2)     Respondent shall have thirty (30) days from the date of this Order to file an

01 amended answer addressing the merits of the petition. Petitioner shall then have fifteen (15)  
02 days to file an optional reply.

03 (3) The Clerk shall direct copies of this Order to all counsel of record and to the  
04 Honorable John C. Coughenour.

05 DATED this 6th day of April, 2005.

06  
07 /s/ James P. Donohue  
08 United States Magistrate Judge  
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